

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JOSH THOMAS, an individual, on
behalf of himself and others similarly
situated,

Plaintiff,

v.

JPMORGAN CHASE & CO, a Delaware
corporation

Defendant.

CASE NO. C20-5902 BHS

ORDER DENYING WITHOUT
PREJUDICE DEFENDANT'S
MOTION TO COMPEL
ARBITRATION

This matter comes before the Court on Defendant JPMorgan Chase Bank, N.A.'s motion to compel arbitration. Dkt. 16. The Court has considered the pleadings filed in support of and in opposition to the motion and the remainder of the file and hereby denies the motion without prejudice for the reasons stated herein.

I. PROCEDURAL AND FACTUAL BACKGROUND

Plaintiff Josh Thomas took out an Amazon Rewards Visa Signature credit card from Chase Bank in 2015. Dkt. 17, ¶¶ 2, 5. Chase mailed Thomas the card and a copy of the Cardmember Agreement, which provides both that use of the account indicates

1 acceptance of the terms and that the terms may be added to or deleted at any time. *Id.*
2 ¶¶ 3, 5. In 2019, following its merger with Chase, JPMC sent Thomas a notice informing
3 him, among other things, that an arbitration provision was being added to the
4 Cardmember Agreement and that he could opt out through mailing a notice to JPMC at
5 P.O. Box 15298, Wilmington, DE 19850-5298 by August 8, 2019. *Id.* ¶ 6. The notice
6 explained that “[r]ejection notices sent to any other address, or sent by electronic mail or
7 communicated orally, will not be accepted or effective.” Dkt. 17-1 at 24. Thomas
8 declares that on June 11, 2019, he sent a letter rejecting the arbitration agreement. Dkt.
9 22-1, ¶ 8.¹ He also declares that around the same date, he “believe[s] [he] also called their
10 customer service department and told them I wanted to opt out of the arbitration
11 agreement.” *Id.* ¶ 9.

12 Thomas provided a copy of the letter, addressed to Chase, P.O. Box 152298,
13 Wilmington, DE 19850-5298. Dkt. 19-1 at 2. JPMC asserts that it did not receive the
14 letter, as shown by the lack of a note in Thomas’s account. Dkt. 17, ¶ 6. Thomas does not
15 dispute that he addressed his letter to the wrong P.O. Box (adding an additional “2” to the
16 box number).

17 In May 2020, Thomas enrolled in JPMC’s “COVID-19 Payment Assistance”
18 program to defer his credit card payments for three months. Dkt. 1, ¶ 15. He alleges that
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20 ¹ JPMC argues that the Court should not consider Thomas’s declaration since the copy
21 accompanying his response brief, Dkt. 19, was unsigned. Dkt. 20 at 6–7 (citing 28 U.S.C. §
22 1746). As Thomas subsequently docketed a signed copy, Dkt. 22-1, the Court finds no prejudice
to JPMC in considering the declaration as JPMC’s reply addresses the possibility that the Court
would consider the declaration.

1 on August 11, 2020, he began receiving robocalls related to his payments though his first
 2 payment was not due until September 1, 2020. *Id.* ¶¶ 17–20. He received another deferral,
 3 but again began receiving robocalls after an interval. *Id.* ¶¶ 21–23. He now brings a
 4 putative class action against JPMC for violation of the Telephone Consumer Protection
 5 Act, 47 U.S.C. § 227 *et seq.*, violation of the Washington Consumer Protection Act,
 6 RCW Chapter 19.86, breach of contract, and violation of the covenant of good faith and
 7 fair dealing. Dkt. 1.

8 On October 26, 2020, JPMC moved to compel arbitration on an individual basis
 9 and stay. Dkt. 16. On November 16, 2020, Thomas responded. Dkt. 18. On November
 10 20, 2020, JPMC replied. Dkt. 20. On November 25, 2020, Thomas surreplied. Dkt. 24.

11 II. DISCUSSION

12 A. Standard

13 The Federal Arbitration Act, 9 U.S.C. § 1 *et seq.*, makes agreements to arbitrate
 14 “valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity
 15 for the revocation of any contract.” 9 U.S.C. § 2. The FAA supports a liberal policy
 16 favoring arbitration and reinforces the “fundamental principle that arbitration is a matter
 17 of contract.” *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 336 (2011). The FAA
 18 requires courts to “rigorously enforce” agreements to arbitrate, *Mitsubishi Motors Corp.*
 19 *v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 626 (1985), to ensure that private
 20 contractual provisions “are enforced according to their terms.” *Stolt–Nielsen S.A. v.*
 21 *AnimalFeeds Int’l Corp.*, 559 U.S. 662, 684 (2010) (quoting *Volt Info. Sciences, Inc. v.*
 22 *Bd. of Trs. of Leland Stanford Junior Univ.*, 489 U.S. 468, 479 (1989)).

1 On review of a motion to compel arbitration, the court's role is limited to
2 determining (1) whether the parties entered into a valid agreement to arbitrate and if so
3 (2) whether the present claims fall within the scope of that agreement. *Chiron Corp. v.*
4 *Ortho Diagnostic Sys., Inc.*, 207 F.3d 1126, 1130 (9th Cir. 2000). The party seeking to
5 compel arbitration bears the burden of proof on these questions. *Ashbey v. Archstone*
6 *Prop. Mgmt., Inc.*, 785 F.3d 1320, 1323 (9th Cir. 2015) (citing *Cox v. Ocean View Hotel*
7 *Corp.*, 533 F.3d 1114, 1119 (9th Cir. 2008)). To determine whether the parties agreed to
8 arbitrate, courts apply ordinary state-law contract principles. *First Options of Chicago,*
9 *Inc. v. Kaplan*, 514 U.S. 938, 944 (1995). In Washington, "[t]he role of the court is to
10 determine the mutual intentions of the contracting parties according to the reasonable
11 meaning of their words and acts." *Fisher Props., Inc. v. Arden-Mayfair, Inc.*, 106 Wn.2d
12 826, 837 (1986). The FAA requires courts to stay proceedings when an issue before the
13 court can be referred to arbitration. 9 U.S.C. § 3.

14 **B. Analysis**

15 The parties dispute whether a valid agreement to arbitrate exists. Thomas contends
16 that there is a genuine dispute of material fact as to whether he opted out of the
17 arbitration agreement and seeks limited discovery on JPMC's receipt of his
18 communications. Dkt. 18 at 5. JPMC argues no valid opt-out occurred because (1) the
19 opt-out letter was misaddressed and (2) verbal opt-out was not available under the
20 provision's terms. Dkt. 20 at 8–9. In support of its reply, JPMC submits a supplemental
21 declaration from an employee familiar with JPMC's processes for customer opt-out
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1 requests, affirming that JPMC “would not . . . receive” mail addressed to the P.O. Box
2 Thomas listed. Dkt. 21, ¶ 3.

3 In the alternative, JPMC questions the authenticity of Thomas’s opt-out letter,
4 pointing out that Thomas submitted and withdrew an opt-out letter in another matter
5 following defense counsel’s allegation that it was fraudulent. Dkt. 20 at 10 (citing
6 *Thomas v. Am. Express*, C20-5785TSZ, Dkt. 21 (W.D. Wash.)). JPMC thus seeks limited
7 discovery “including a review of the metadata associated with the Word file used to
8 create the purported opt-out letter as well as proof of transmission and/or receipt” so the
9 Court “can properly assess the credibility of Plaintiff’s declaration.” Dkt. 20 at 11.
10 Thomas argues that JPMC mischaracterizes the withdrawal in the other proceeding and
11 moves to strike the characterization as impertinent under Fed. R. Civ. P. 12(f), but does
12 not dispute that he withdrew that letter. Dkt. 24 at 4–5. Thomas seeks limited discovery
13 of JPMC’s records for his account, copies of telephone calls and notes regarding the calls
14 between May 21, 2019 and August 9, 2019, all written communications JPMC received
15 from Thomas during the same period, and all JPMC’s internal notes and communications
16 regarding his account during the same period. Dkt. 18 at 5. He argues this discovery may
17 show JPMC did not add a note to his account by mistake, incorrectly determined his letter
18 did not satisfy the opt-out requirements, or intentionally did not note receipt of the letter.
19 JPMC counters that as it has already confirmed it has no record of a valid opt-out, the
20 additional discovery Thomas proposes would serve no purpose. Dkt. 20 at 11.

21 The Court concludes that the limited discovery proposed by each party may allow
22 it to determine whether there is any genuine dispute of fact as to the existence of an

1 agreement to arbitrate, and if not, to decide the issue as a matter of law. *See Powell v.*
2 *United Rentals (N. Am.), Inc.*, 2019 WL 1489149, at *3 (W.D. Wash. Apr. 3, 2019)
3 (citing *Three Valleys Mun. Water Dist. v. E.F. Hutton & Co.*, 925 F.2d 1136, 1141 (9th
4 Cir. 1991)). The parties shall meet and confer regarding this discovery and submit a
5 proposed discovery plan for the Court.

6 **III. ORDER**

7 Therefore, it is hereby **ORDERED** that JPMC's motion to compel arbitration,
8 Dkt. 16, is **DENIED without prejudice**.

9 Dated this 6th day of January, 2021.

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12 **BENJAMIN H. SETTLE**
United States District Judge

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